

REFERENCE TITLE: foreclosure sales; notice to tenants

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1413

Introduced by
Senator McCune Davis; Representatives Meza, Pancrazi, Sinema: Ableser,
Brown, Campbell CH, Farley, Lujan, Schapira

AN ACT

AMENDING SECTION 33-808, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1331; RELATING TO LANDLORDS AND TENANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-808, Arizona Revised Statutes, is amended to
3 read:

4 33-808. Notice of trustee's sale

5 A. The trustee shall give written notice of the time and place of sale
6 legally describing the trust property to be sold by each of the following
7 methods:

8 1. Recording a notice in the office of the recorder of each county
9 where the trust property is situated.

10 2. Giving notice as provided in section 33-809 to the extent
11 applicable.

12 3. Posting a copy of the notice of sale, at least twenty days before
13 the date of sale in some conspicuous place on the trust property to be sold,
14 if posting can be accomplished without a breach of the peace. If access to
15 the trust property is denied because a common entrance to the property is
16 restricted by a limited access gate or similar impediment, the property shall
17 be posted by posting notice at that gate or impediment. Notice shall also be
18 posted at one of the places provided for posting public notices at any
19 building that serves as a location of the superior court in the county where
20 the trust property is to be sold. Posting is deemed completed on the date
21 the trust property is posted. The posting of notice at the superior court
22 location is deemed a ministerial act.

23 4. Publication of the notice of sale in a newspaper of general
24 circulation in each county in which the trust property to be sold is
25 situated. The notice of sale shall be published at least once a week for
26 four consecutive weeks. The last date of publication shall not be less than
27 ten days prior to the date of sale. Publication is deemed completed on the
28 date of the first of the four publications of the notice of sale pursuant to
29 this paragraph.

30 5. MAILING A NOTICE TO THE PROPERTY ADDRESSED TO THE "RESIDENT OF
31 PROPERTY IN FORECLOSURE" THAT STATES:

32 THIS PROPERTY IS IN FORECLOSURE AND YOUR RIGHT TO CONTINUE
33 TO LIVE IN THIS PROPERTY MAY BE AFFECTED. IF THIS PROPERTY IS
34 SOLD AT A FORECLOSURE SALE, THE NEW OWNER MAY CANCEL ANY LEASE
35 YOU HAVE AND YOU MAY BE REQUIRED TO MOVE WITH THIRTY DAYS'
36 NOTICE.

37 B. The sale shall be held at the time and place designated in the
38 notice of sale on a day other than a Saturday or legal holiday between 9:00
39 a.m. and 5:00 p.m. mountain standard time at a specified place on the trust
40 property, at a specified place at any building that serves as a location of
41 the superior court or at a specified place at a place of business of the
42 trustee, in any county in which part of the trust property to be sold is
43 situated.

- 1 C. The notice of sale shall contain:
- 2 1. The date, time and place of the sale. The date, time and place
- 3 shall be set pursuant to section 33-807, subsection D. The date shall be no
- 4 sooner than the ninety-first day after the date that the notice of sale was
- 5 recorded.
- 6 2. The street address, if any, or identifiable location as well as the
- 7 legal description of the trust property.
- 8 3. The county assessor's tax parcel number for the trust property or
- 9 the tax parcel number of a larger parcel of which the trust property is a
- 10 part.
- 11 4. The original principal balance as shown on the deed of trust. If
- 12 the amount is not shown on the deed of trust, it shall be listed as
- 13 "unspecified".
- 14 5. The names and addresses, as of the date the notice of sale is
- 15 recorded, of the beneficiary and the trustee, the name and address of the
- 16 original trustor as stated in the deed of trust, the signature of the trustee
- 17 and the basis for the trustee's qualification pursuant to section 33-803,
- 18 subsection A, including an express statement of the paragraph under
- 19 subsection A on which the qualification is based. The address of the
- 20 beneficiary shall not be in care of the trustee.
- 21 6. The telephone number of the trustee.
- 22 7. The name of the state or federal licensing or regulatory body or
- 23 controlling agency of the trustee as prescribed by section 33-803,
- 24 subsection A.
- 25 D. The notice of sale shall be sufficient if made in substantially the
- 26 following form:

Notice of Trustee's Sale

The following legally described trust property will be sold, pursuant to the power of sale under that certain trust deed recorded in docket or book _____ at page _____ records of _____ county, Arizona, at public auction to the highest bidder at (specific place of sale as permitted by law) _____, in _____ county, in or near _____, Arizona, on _____, _____, at _____ o'clock ____m. of said day:

(street address, if any, or identifiable

location of trust property)

(legal description of trust property)

Tax parcel number _____

Original principal balance \$ _____

Name and address of beneficiary _____

1 Name and address of original trustor _____
 2 _____
 3 _____
 4 Name, address and telephone number of trustee _____
 5 _____
 6 _____
 7 Signature of trustee _____
 8 Manner of trustee qualification _____
 9 Name of trustee's regulator _____

10 Dated this _____ day of _____, ____.
 11 (Acknowledgement)

12 E. Any error or omission in the information required by subsection C
 13 or D of this section, other than an error in the legal description of the
 14 trust property or an error in the date, time or place of sale, shall not
 15 invalidate a trustee's sale. Any error in the legal description of the trust
 16 property shall not invalidate a trustee's sale if considered as a whole the
 17 information provided is sufficient to identify the trust property being sold.
 18 If there is an error or omission in the legal description so that the trust
 19 property cannot be identified, or if there is an error in the date, time or
 20 place of sale, the trustee shall record a cancellation of notice of sale.
 21 The trustee or any person furnishing information to the trustee shall not be
 22 subject to liability for any error or omission in the information required by
 23 subsection C of this section except for the wilful and intentional failure to
 24 provide such information. This subsection does not apply to claims made by
 25 an insured under any policy of title insurance.

26 F. The notice of trustee sale may not be rerecorded for any
 27 reason. This subsection does not prohibit the recording of a new or
 28 subsequent notice of sale regarding the same property.

29 Sec. 2. Title 33, chapter 10, article 2, Arizona Revised Statutes, is
 30 amended by adding section 33-1331, to read:

31 33-1331. Foreclosure sales; ninety day rental; notice to tenant

32 A. A LANDLORD SHALL PROVIDE TENANTS WITH WRITTEN NOTICE OF ANY
 33 FORECLOSURE ACTION AGAINST THE PROPERTY. THE WRITTEN NOTICE SHALL STATE:

34 THIS PROPERTY IS IN FORECLOSURE AND YOUR RIGHT TO CONTINUE
 35 TO LIVE IN THIS PROPERTY MAY BE AFFECTED. IF THIS PROPERTY IS
 36 SOLD AT A FORECLOSURE SALE, THE NEW OWNER MAY CANCEL ANY LEASE
 37 YOU HAVE AND YOU MAY BE REQUIRED TO MOVE WITH THIRTY DAYS'
 38 NOTICE.

39 B. ON COMPLETION OF ANY FORECLOSURE SALE OF THE PROPERTY, THE NEW
 40 OWNER BECOMES THE LANDLORD AND SHALL BE BOUND BY THIS CHAPTER. ANY TENANT
 41 WHO LAWFULLY RESIDES ON THE FORECLOSED PROPERTY AT THE TIME THE FORECLOSURE
 42 IS COMPLETED BECOMES A TENANT WITH A NINETY DAY LEASE WITH THE NEW LANDLORD
 43 AT THE SAME RENTAL RATE AS ON THE DATE OF THE COMPLETION OF THE FORECLOSURE
 44 SALE AND EFFECTIVE ON THE DATE OF THE COMPLETION OF THE FORECLOSURE SALE.
 45 THE LANDLORD MAY OFFER A TENANCY OF A LONGER DURATION TO THE TENANT BUT SHALL

1 NOT REDUCE THE TENANCY OR LEASE AGREEMENT TO LESS THAN NINETY DAYS.
2 TERMINATION OF THE NINETY DAY LEASE MAY BE MADE WITH AT LEAST THIRTY DAYS'
3 NOTICE BEFORE THE END OF THE NINETY DAY TERM.

4 C. IN ADDITION TO ANY OTHER REMEDY PROVIDED BY LAW, A TENANT MAY
5 RECOVER THE GREATER OF ACTUAL DAMAGES OR ONE MONTH'S RENT AND SECURITY
6 DEPOSIT, IN ADDITION TO REASONABLE ATTORNEY FEES AND COSTS, IF A LANDLORD OR
7 THE LANDLORD'S SUCCESSOR IN INTEREST FAILS TO PROVIDE NOTICE AS PRESCRIBED IN
8 SUBSECTION A OR FAILS TO HONOR A RENTAL AGREEMENT ESTABLISHED PURSUANT TO
9 SUBSECTION B.